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January 27, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: August 6, 2004
Case Number: TSO-0136

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual should be granted access authorization.

I. BACKGROUND

The individual is an employee of a Department of Energy (DOE) contractor. In 2002, the individual's employer requested that the individual be granted a DOE access authorization. In August 2002, the individual completed a Questionnaire for Nation Security Positions (the 2002 QNSP) in which he reported that he had been arrested several times for alcohol related offenses. The DOE conducted a Personnel Security Interview with the individual in October 2003 (the 2003 PSI). In addition, at the request of DOE security, the individual was evaluated in February 2004 by a DOE-consultant psychiatrist (the DOE-consultant psychiatrist), who issued a report containing his conclusions and observations). In June 2004, the Manager for Personnel Security of the DOE area office where the individual is employed (the Manager) issued a Notification Letter to the individual. In this letter, the Manager states that the individual's behavior has raised security concerns under Section 710.8(j) of the regulations governing eligibility for access to classified material. Specifically, the Manager finds that the individual has been diagnosed by the DOE-consultant psychiatrist as suffering from Alcohol Dependence without evidence of rehabilitation or reformation. The Notification Letter also

refers to the individual's arrests for Driving Under the Influence of Alcohol (DUI) in 1981, 1987, 1988, 1996 and 2000. Following his 2000 DUI, the individual received a fine and his driver's license was revoked permanently. The Notification Letter then summarizes statements made by the individual at his 2003 PSI that raise a Subpart j concern, including (1) that his "battle with alcohol, basically over the years, you know, it just got worse as alcoholism does"; (2) that he was arrested for DUI in 1996 after consuming five to six beers; (3) that he was arrested for DUI in September 2000 after consuming eight or ten beers during a six or seven hour period of time; and (4) that he has not had a drink or the temptation to drink since his 2000 DUI. Notification Letter Enclosure 1 at 1-4.

The individual requested a hearing (hereinafter "the Hearing") to respond to the concerns raised in the Notification Letter. The individual and his counsel do not contest the DOE-consultant Psychiatrist's diagnosis of alcohol dependence, which was endorsed in testimony at the Hearing by the individual's psychologist and by his alcohol abuse counselor. Accordingly, I find that the individual suffers from alcohol dependence subject to Criterion (j).

In a statement submitted prior to the hearing, the individual describes his alcohol history and his coming to terms with his alcohol problem as follows:

[The DOE-consultant Psychiatrist] is correct and the record supports that, in the past, there were periods of time when he did not drink and then he would be in a situation where he drank too much. It is true that he has taken several rather limited sessions on the problems of drinking and then would, on occasion, drink excessively again. Never did he truly acknowledge that alcohol caused him problems. He was a typical abuser of alcohol who was in denial.

His last DUI was an epiphany in several ways. Along with being able to face the difficulties arising from alcohol, he has taken the important step of disclosing his uncle's abuse of him as a young child to his wife and now to others and himself. This has been like lancing a boil and letting the poison out. . . .

[The individual] has taken important and responsible steps to assure himself that drinking will no longer be

a part of his life. He and his wife have made a complete and extreme change of life style. . . . He and his wife are partners in this difficult facing up to and owning alcoholism as well as dealing with the pain of child abuse.

Individual's September 20, 2004 Statement at 1. In his Statement, the individual also asserts that contrary to the DOE-consultant Psychiatrist's opinion, he feels that counseling has been of great help in facing his alcoholism and other personal issues. He also disagrees with the DOE-consultant Psychiatrist's characterization of this family history as "heavily loaded with alcoholism." Finally, he states that he has had four years of sobriety and has taken "all remedial action available to him." Statement at 1-4. Accompanying his Statement, the individual submitted letters from six people who believe that the individual has completely abstained from alcohol during this period. Five of these people also testified at the individual's hearing.

The requested hearing in this matter was convened in October 2004 (hereinafter the "Hearing"), and the testimony focused chiefly on the concerns raised by the individual's past pattern of alcohol consumption, and on the individual's efforts to mitigate those concerns through abstinence from alcohol and recovery activities.

II. *REGULATORY STANDARD*

In order to frame my analysis, I believe that it will be useful to discuss briefly the respective requirements imposed by 10 C.F.R. Part 710 upon the individual and the Hearing Officer. As discussed below, Part 710 clearly places upon the individual the responsibility to bring forth persuasive evidence concerning his eligibility for access authorization, and requires the Hearing Officer to base all findings relevant to this eligibility upon a convincing level of evidence. 10 C.F.R. §§ 710.21(b)(6) and 710.27(b), (c) and (d).

A. *The Individual's Burden of Proof*

It is important to bear in mind that a DOE administrative review proceeding under this Part is not a criminal matter, where the government would have the burden of proving the defendant guilty beyond a reasonable doubt. The standard in this proceeding places the burden of proof on the individual. It is designed to protect national security interests. The hearing is "for the purpose of affording the individual an opportunity of supporting his

eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *Personnel Security Review (Case No. VSA-0087)*, 26 DOE ¶ 83,001 (1996); *Personnel Security Hearing (Case No. VSO-0061)*, 25 DOE ¶ 82,791 (1996), *aff'd*, *Personnel Security Review (VSA-0061)*, 25 DOE ¶ 83,015 (1996). The individual therefore is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The regulations at Part 710 are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, by regulation and through our own case law, an individual is afforded the utmost latitude in the presentation of evidence which could mitigate security concerns.

Nevertheless, the evidentiary burden for the individual is not an easy one to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. In addition to his own testimony, we generally expect the individual in these cases to bring forward witness testimony and/or other evidence which, taken together, is sufficient to persuade the Hearing Officer that restoring access authorization is clearly consistent with the national interest. *Personnel Security Hearing (Case No. VSO-0002)*, 24 DOE ¶ 82,752 (1995); *Personnel Security Hearing (Case No. VSO-0038)*, 25 DOE ¶ 82,769 (1995) (individual failed to meet his burden of coming forward with evidence to show that he was rehabilitated and reformed from alcohol dependence).

B. Basis for the Hearing Officer's Decision

In personnel security cases under Part 710, it is my role as the Hearing Officer to issue a decision as to whether granting an access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I must examine the evidence in light of these requirements, and assess the credibility and demeanor of the witnesses who gave testimony at the hearing.

III. HEARING TESTIMONY

At the Hearing, testimony was received from ten persons. The DOE presented the testimony of the DOE-consultant psychiatrist. The individual, who was represented by counsel, testified and presented the testimony of a clinical psychologist from whom he has received counseling (the individual's psychologist), the individual's alcohol abuse counselor, the individual's brother-in-law, the individual's current supervisor, a married couple who are co-workers and social friends, a longtime family friend, and the individual's wife. 1/

A. The DOE-consultant Psychiatrist

The DOE-consultant Psychiatrist testified that in February 2004 he evaluated the individual and classified him as alcohol dependent based on the facts that he had developed a tolerance for alcohol over the years, found himself in situations where he drank more than he expected, had concealed his drinking, and had a long

1/ As indicated by the resume and testimony of the DOE-consultant psychiatrist (DOE Exhibit 1 and TR at 13-14), the individual's alcohol abuse counselor (Individual's Exhibit 1 and TR at 57-58) and by the testimony of the individual's psychologist (TR at 23-24), these medical professionals have extensive clinical experience in diagnosing and treating alcohol related illnesses. They clearly qualify as expert witnesses in this area.

history of alcohol offenses. Hearing Transcript (TR) at 15. He stated that these factors are discussed as a basis for alcohol dependence in the Transitional Manual of the American Psychiatric Association, which has replaced the DSM-IV manual. He added that the individual's strong family history of alcoholism, while not a diagnostic factor for alcohol dependence, was definitely a risk factor for that condition. TR at 16.

With regard to the individual's rehabilitation, the DOE-consultant Psychiatrist noted that the individual had acknowledged that there had been an eight year period in his adult life, from 1987 to 1996, when he had abstained from alcohol and then went back to drinking. The DOE-consultant Psychiatrist concluded that this history placed the individual in a statistical category of persons more likely to relapse after several years of sobriety. He therefore concluded, based on two academic studies on alcohol relapse, that it would take eight years of sobriety before the individual's risk of relapse fell below fifty percent. TR at 18. 2/

In response to a question by the individual's counsel, the DOE-consultant Psychiatrist reiterated the statement contained in his report that he did not think that further alcohol counseling would benefit the individual. TR at 20.

B. The Individual's Psychologist

The Individual's Psychologist testified that he was a consultant psychologist with the Human Reliabilities Program at the facility where the individual works. He stated that the Human Reliabilities Program is for individuals who have access authorization, and that the individual had consulted him in his private practice rather than through the workplace. TR at 45. He stated that the individual first consulted with him in early September 2004, and is now seeing him on a weekly basis. TR at 32. He stated that he believes that the individual meets the criteria for a diagnosis of alcohol dependence. TR at 34. He testified that his observations

2/ The DOE-consultant Psychiatrist later identified these studies as (1) a European journal study on alcoholism quoted in Maltzman: "Alcoholism", Kulver Academic Publishers, 1999 (p 200 ff); and (2) Valliant: "A Long Term Follow-up of Male Alcohol Abuse", Archives of General Psychiatry, 1996 (Vol. 53, pp 243-249). See October 26, 2004 letter from the DOE-consultant Psychiatrist to the DOE Counsel.

of the individual persuaded him that the individual was no longer in denial:

First of all, he was very convincing, he was very open, non-defensive and was very convincing when he said that he knew that he wouldn't drink again.

TR at 25. He said that the individual told him that prior to his 2000 DUI, he had always attributed his arrests to bad luck, being in the wrong place at the wrong time, but that his 2000 DUI had changed him.

But I think sincerely that his outlook changed with his last arrest in [2000], when he was transported by a bail bondsman to the airport, I think that is when he finally had the epiphany. What have I done to myself? What have I done to my life? And I think it was; what was I thinking? And I think it was a pretty strong indication that denial was coming to an end. He started looking for [Alcoholics Anonymous] meetings after that. . . . I think he finally got it. And I think he understood it is not his job so much, but it is his health, his marriage and all the things that he had worked to achieve in his previous drinking life.

TR at 26-27. He stated that he detected no hints of denial or rationalization in the individual's statements. He also stated that the individual is strongly committed to his marriage and is aware that the marriage will end if he starts drinking again. TR at 27. He said that he has discussed with the facility's medical division the possibility of doing random liver enzyme tests and breathalyzer tests on the individual to support his sobriety and that they were agreeable to doing those tests. TR at 28. He stated that the individual has expressed an interest in continuing psychological counseling to address factors that he felt contributed to his alcohol problem. TR at 29. The Individual's Psychologist concluded that

So I think he is sincere in his goal to remain sober, to maintain his sense of health, mental health, his relationship with his wife and then his job. And I think it is in that order. So I have confidence. Would I have more confidence if we built in screening? Sure I would. But I'm certainly willing to take that chance with him.

Id. He testified that he suggested that the individual see the alcohol abuse counselor because she works a lot with individuals with alcohol abuse problems and it would be nice to have a second opinion from an experienced professional. TR at 30.

The Individual's Psychologist said that he believed that the individual had been sober since the 2000 DUI based on their conversations and on his belief that the individual's marriage would have ended otherwise. TR at 33. He stated that the individual's strong relationship with his wife, his willingness to go to Alcoholics Anonymous (AA), and his willingness to seek counseling are factors that support his ability to do the continual work necessary to maintain his sobriety. TR at 35. When asked if he considered the individual to be "rehabilitated now as of today", the Individual's Psychologist answered in the negative, but stated that the individual had a low risk of relapse if he were subjected to random liver enzyme and breathalyzer screens in the workplace. TR at 37. He estimated that at the present time, the individual's risk of relapse "is far lower than the probability of his maintained sobriety." TR at 41.

C. The Individual's Alcohol Abuse Counselor

The individual's alcohol abuse counselor testified via telephone. She stated that she submitted findings and recommendations to the DOE in which she wrote that the individual was alcohol dependent and suffers from chronic relapse situation. Tr at 68. She stated that although the individual previously has relapsed after long periods of sobriety, 3/ she believes that counseling can teach him how to avoid an approaching relapse and maintain permanent sobriety.

I think [the individual] falls in a category where he was able to truly have long periods of abstinence, but he never gained all the insight that he needed to truly accept his disease and to fully embrace recovery, as well as learning what are the symptoms of a pending relapse. A relapse actually begins before you start active alcohol or drug use. It is when you become unstable within your recovery. And so I believe that those kinds of things were happening for [the individual] without him realizing it and he was in a vulnerable situation and it was very

3/ The individual had previous periods of sobriety from 1988 to 1996 and from 1996 until 2000.

easy for him to go into active use. So that is why I feel as though he can take additional measures now that can promote a long term lasting recovery.

TR at 59. The Alcohol Abuse Counselor stated that she has seen the individual four times and his wife once, and that she and the individual have agreed to work through an entire program of relapse recovery. She said that they will use the "Synapse Model of Treatment", which was developed especially for people who were not able to maintain long term sobriety in spite of sincere efforts. TR at 60. She testified that she believes that "on a deep level he knows he is an alcoholic." TR at 62. She also believes that he is sincere in his efforts at maintaining sobriety. TR at 64. The Alcohol Abuse Counselor recommends that he seek random testing in his workplace because that is a structure that can provide support and reassurance for both the individual and his employer. TR at 64. She stated that an abstinence contract between the individual and his employer could provide direction and accountability of the individual. TR at 65. She said that because she is aware that the individual works long hours and has transportation problems, she gave the individual information about attending AA on-line. TR at 66-67.

In response to questioning by the DOE counsel, the Alcohol Abuse Counselor declined to estimate the individual's risk of relapse as above or below fifty percent. She stated that he had a high chance of success if he followed the relapse prevention plan. TR at 69. She stated that a local drug court program has a better than sixty percent success rate with people who have repeated legal problems with alcohol and drug use. She stated that the drug court program is very similar to the one that she is providing to the individual

because it is a cognitive restructuring, it's working on core beliefs, it's identifying relapse symptoms and what to do when you notice that you are no longer in a stable mode.

TR at 70. Finally, she stated that based on her sessions with the individual, she believed that he had not consumed alcohol since his 2000 DUI. TR at 74.

D. The Individual's Brother-in-law

The individual's brother-in-law testified that stated that he is a medical doctor and is currently the president of a health care company that specializes in educating patients who have chronic

illnesses. He also stated that he has had past problems with alcohol, has participated in AA, and has been sober for the last seven and a half years. TR at 47-48. He has known the individual since he married the individual's sister in the mid-1970's. He stated that immediately following the individual's September 2000 DUI, the individual visited him, discussed his alcoholism, and attended AA sessions with him. TR at 84-85. He said that in the past four years, he and the individual have talked a lot about recovery and alcohol dependence and abuse. He said that the individual

has spoken freely to me about the fact that he believes that he is an alcoholic and that he is over his denial about alcoholism. And we have attended AA meetings over the past four years when they come to visit us in [a neighboring state].

TR at 49. He testified that the individual and his wife visit two or three times a year and that he believes that he and the individual have been to fifteen or twenty AA meetings together in the last four years. *Id.* He stated that he believed that the individual had made a real effort to make changes in his life that would lower the risk of relapse, notably changing jobs so that he could remain with his wife rather than be constantly on the road. TR at 50-51. He said that when the individual was diagnosed as being at a high risk for relapse by the DOE-consultant Psychiatrist, it surprised him and led him to look for additional advice and professional counseling. TR at 53. He said that the individual has told him that

he is hearing for the first time that he has to have a substantial plan for ensuring that he does not relapse, that he wants to do that, and recognizes that those actions are necessary for him. And what he wants to do is continue the counseling on relapse prevention, that he wants to develop a network in AA and make sure that he continues his study of his addiction and of what it means to be an alcoholic so that he can enhance his sobriety.

TR at 82. He stated that he has not witnessed the individual consume alcohol or heard reports that the individual had consumed alcohol, since the individual's 2000 DUI. TR at 86.

E. The Individual's Current Supervisor

The individual's current supervisor testified that he has known and worked with the individual for about two and one half years, and has been the individual's supervisor for over one year. He stated that the individual has a strong work ethic and that he completes a work schedule of seventy to seventy-five hours a week without tardiness or missing any scheduled work days. TR at 88. He stated that he and the individual work the night shift and then exercise together at a local gym. He stated that does not socialize with the individual and his wife on weekends. He testified that he has not seen or heard of the individual consuming alcohol since they've known one another. He said that he did not think that anyone with an active alcohol problem could maintain the individual's work schedule. He said that he was aware that the individual had been engaged in alcohol counseling activities for the last few months. TR at 89-96.

F. The Individual's Co-workers and Social Friends

A married couple who are co-workers and social friends of the individual testified on his behalf. The wife testified by telephone and stated that she has known the individual for about two years and has worked with him for a year and three or four months. In a written statement submitted prior to the Hearing, she stated that she had gone to dinner and boating with the individual and his wife several times during the last two years and has never seen the individual consume alcohol or observed any other signs that the individual had used alcohol. She affirmed these statements in her testimony. She also stated that the individual has talked to her about his past problems with alcohol, and it is her belief that the individual "never, never wants to drink alcohol again." TR at 98. She stated that she works with the individual every day and that she and her husband socialize with the individual and his wife about once every other month. TR at 99.

The husband had also submitted a written statement that essentially repeats the observations made by his wife. At the Hearing, he clarified that although he works at the same job site as the individual, he and the individual are on opposite shifts so they do not actually work together. TR at 104. He stated that he and his wife occasionally have a beer when dining or boating with the individual and his wife, but that he has never seen the individual consume alcohol. TR at 105.

G. The Individual's Long-Time Friend

The long-time friend testified by telephone that she has known the individual and his wife for at least ten years. She stated that the individual's step daughter and her daughter became good friends in middle school and through them she and her husband became good friends with the individual and his wife. She stated that until the individual and his wife relocated to another state in 2002 to take his current job, she saw them every week on a social basis.

We saw each other every week and went to dinner and they came to our house a lot and we spent a lot of time watching the kids grow up. And since they moved away, they are probably here three or four times a year. We spend at least a week together on vacation and they are usually here for Thanksgiving and sometimes around Easter.

TR at 110. She stated that she has not seen the individual consume alcohol since his 2000 DUI. TR at 110. She stated that the individual has worked with her husband in the past and she considers the individual to have good judgment and to be very reliable. TR at 111. She testified that her husband often consumes alcohol when they are with the individual and his wife on social occasions, but that the individual does not consume any. TR at 113.

H. The Individual's Wife

The individual's wife testified that she has known the individual for about sixteen years and has been married to him for ten years. She testified that following the individual's 2000 DUI, she left a good job position to move to another state where the individual had a temporary job. She stated that they then selected the individual's current job because it does not require him to travel away from home for extended periods. She testified that she would not have made the sacrifice of giving up her career and relocating if she was not convinced that the individual was sincere in his intention never to drink alcohol again. She stated that to her knowledge, the individual has not consumed alcohol since his 2000 DUI. TR at 117-119. She stated that she believes that after the 2000 DUI, the individual took ownership of his alcohol problem. TR at 120. She stated that because the individual has permanently lost his driver's license, she must drive him to any stores and appointments that he cannot reach on his bicycle, and that she

would never do all that for him if she thought that he would ever drink again. TR at 122.

In response to questioning, she stated that if the individual ever drank again, she would encourage him to check himself into a residential treatment program, and then she would dissolve their marriage. TR at 126. She stated that she has never observed her husband driving surreptitiously following the revocation of his license. TR at 128.

I. The Individual

The individual testified that he is in his mid-forties and is a college graduate. He stated that his career generally involved a lot of travel to different work sites around the country. He had just traveled to a new site to begin a temporary job when he was arrested for DUI in 2000. He stated that he declined to begin this new job and immediately went to stay with his brother-in-law for a week and attend AA meetings with him. TR at 130-135. He then took two temporary positions in other states, and his wife agreed to relocate and reside there with him during the second of these positions. He said that during this period he had three or four sessions with a counselor concerning his alcoholism and other personal issues. TR at 136. He also went to a weekend-long alcohol awareness program, where he was told that he did not need any further treatment for alcoholism. TR at 137.

The individual testified that when he started his current job, after a period of training that lasted five weeks he was placed on a night shift where he is generally working twelve and a half or thirteen hours a day, six days a week. TR at 139. He said that he has checked to see if there is an AA meeting compatible with his work schedule, but has been unable to find one. TR at 141.

He stated that there is a possibility that in December 2004, his employer will move everyone to a day shift schedule, and then he will be able to attend AA. TR at 142. He stated that he intends never to drink alcohol again. TR at 146. When questioned by the DOE Counsel, he testified that since his 2000 DUI he has gotten over his denial that he is an alcoholic and that he cannot have even one drink. TR at 150. With respect to his past efforts at recovery he stated that

I think the intentions were there, but the overall will; the denial just blocked it. No matter what I learned in those counseling sessions, or going to AA. I went to AA

for six years two nights a week. And I was not able to grasp what they were saying. The denial was blocking it. And that is the difference between then and in 2000, and now.

TR at 152. The individual stated that following the 2000 DUI, he did attend some AA meetings, but not on a continuing basis. He stated that this was partly because of his work schedule during this period and partly because counselors who told him that he did not need further help to stay sober. He said that when he read the DOE-consultant Psychiatrist's report and its conclusion that he was at a high risk for relapse, he was shocked and decided at that point to get additional counseling and locate an AA meeting that he could attend. TR at 159-161 and 163-164.

J. The DOE-consultant Psychiatrist's Additional Testimony

Following the testimony of the other witnesses, the DOE-consultant Psychiatrist was asked to discuss whether what he had heard had changed his position that the individual would need eight years of sobriety to establish rehabilitation. The DOE-consultant Psychiatrist stated that he remained "puzzled" as to what made the individual give up alcohol for eight years from 1987 to 1996 and then resume drinking. He stated that his relationships with his wife and his brother-in-law were positive for maintaining sobriety, as was the fact that he was now in his mid-forties. He said that from what he had heard, he certainly would encourage the individual to get additional treatment. However, he stated that he was unable to conclude that the individual had achieved rehabilitation from his alcoholism.

I'm afraid that at this point, unless I hear something different from someone . . . I think I'm unable to make a decision to a reasonable degree of medical certainty. I have, in a sense, pulled back from the certainty that I have had here, but I don't disavow it, it is too even for me.

TR at 169. In response to the DOE-consultant Psychiatrist's question about when the individual received his report, the individual and his counsel informed the DOE-consultant Psychiatrist that the individual received a summary of the DOE-consultant Psychiatrist's findings attached to the Notification letter in late June 2004, and his full report at a later date when the individual received hearing exhibits from the DOE. The DOE-consultant Psychiatrist then commented that

He knew the diagnosis, he knew he was going to have a hearing. But the epiphany didn't come, I gather, until September because he wasn't in treatment until September. And so I have to wonder whether this was part of the preparation for the hearing. I don't know that and I'm not saying it was so.

TR at 180.

K. The Individual's Psychologist's Additional Testimony

The Individual's Psychologist stated that he believed that the individual's problem drinking and his decision to resume drinking after eight years of sobriety was based in denial that he was alcoholic. He testified that the individual has overcome that denial and now has a good chance of maintaining his sobriety.

During those eight years, even when he was in AA and even in counseling, I just think he did not get it. How do I know he got it [in 2000]? It is based on a clinical judgment after working with him in counseling. Everything he says [is] consistent, sincere, responsible and I really do think he had the insight after that last DUI. He got it. It is really hard to quantify the surrendering of denial. You just have to go with a clinical judgment. And my strong clinical judgment is that he is there. I am reasonably convinced that he will maintain his sobriety. He has an awful lot of strengths and support. But the biggest factor is he knows he is alcoholic, he knows what he has to do and he has been responsible in pursuing that now.

TR at 169-170.

IV. POST-HEARING SUBMISSIONS

As discussed above, both the Individual's Psychologist and the IAC indicated in their Hearing testimony that the individual would benefit from committing to a voluntary alcohol monitoring program with his employer and/or an agreement with his counselors that would formalize his commitment to continuing abstinence from alcohol. At the Hearing, I granted a request from that individual's counsel that he be permitted to submit such agreements into the record. TR at 185-186. On December 7, 2004, the individual submitted two such agreements. One, entitled "Alcohol Certification", states that the individual agrees to continue to

maintain his sobriety by completely abstaining from the use of alcohol. It also states that the individual agrees to subject himself to frequent random screens - breathalyzer, urine screens, and blood screens for abnormal liver function - as a way for his employer and the DOE to monitor his abstinence and sobriety. This document is signed by the individual, his counsel, his employer's medical department representative, and the individual's supervisor.

The other document, entitled Contractual Agreement is signed by the individual and the individual's Alcohol Abuse Counselor. In this document, the individual agrees to continue regular attendance in relapse prevention therapy until both parties agree that it is no longer necessary. The individual also agrees to attend AA (on-line and/or in person) meetings regularly.

The Individual's Psychologist submitted a letter in which he stated that the statistical studies cited by the DOE-consultant Psychiatrist may have limited relevance in this case because the data was obtained solely from the alcoholics themselves and did not include information from "family members, friends, co-workers and mental health professionals who worked with the problem drinkers" and which could provide "highly useful reporting of factors contributing to the successful resolution to an alcohol problem." November 7, 2004 letter from the Individual's Psychologist to the Hearing Officer. In a reply, the DOE-consultant Psychiatrist disagreed, stating that "if you ask only the alcoholic if he is still drinking, you come up with an estimate of risks at various times." December 16, 2004 letter from the DOE-consultant Psychiatrist to the DOE Counsel.

V. ANALYSIS

The individual believes that he currently is rehabilitated and reformed from his diagnosis of alcohol dependence and therefore has mitigated the Criterion (j) security concern. For the reasons stated below, I conclude that the individual's arguments and supporting evidence on this issue fully resolve the security concern.

A. *The Individual's Abstinence from Alcohol*

In his September 2004 Statement and in his testimony at the Hearing, the individual contends that he has completely abstained from alcohol since his last DUI in September 2000, a period of over four years. I find that the individual has adequately corroborated this assertion with a number of witnesses who spend

significant time with the individual. The individual's wife has resided with the individual in his temporary job locations since 2000, with only brief absences. The individual's brother-in-law counseled the individual immediately after his 2000 arrest and attends AA meetings with him several times a year. The individual's current supervisor and exercise partner has seen the individual on a daily basis before, during and after work for the last two and a half years. A married couple who are co-workers and social friends have dined out with the individual and his wife several times a year for the last two years, and a longtime friend regularly socializes with the individual and his wife on their family vacations. All of these witnesses testified that they have not observed the individual consume alcohol or exhibit any signs of alcohol use. In addition, the individual's sister submitted a letter dated September 12, 2004 in which she states that she is not aware of any instances of alcohol use by the individual since September 2000 arrest. Finally, the Individual's Psychologist and the Alcohol Abuse Counselor both testified that based on their conversations with the individual, they believe that he has not consumed alcohol since his September 2000 DUI. Accordingly, I conclude that the individual has established a four year period of sobriety beginning on September 2, 2000, the day after his September 1, 2000 arrest for DUI.

B. Individual's Recovery Activities and Current Risk of Relapse

The testimony at the Hearing indicated that following the individual's September 2000 DUI, he visited his brother-in-law and attended a few AA sessions with him. However, the individual has only attended AA sessions sporadically over the last four years. In the last four months of 2000, he had three or four sessions with a counselor concerning his alcoholism and other personal issues. In 2001, he attended a weekend-long alcohol awareness program. Aside from infrequent attendance at AA meetings, he did not actively participate in recovery activities after he moved to the location of his current job until 2004, when he read the DOE-consultant Psychiatrist's assessment that he remained at high risk for relapse. In early September 2004 he began sessions with a psychologist to explore recovery and other personal issues. Later in 2004 he also began to have sessions with an alcohol abuse counselor in order to learn to identify and avoid an approaching relapse and maintain permanent sobriety. At the time of the Hearing, he stated that he intended to continue with both his psychological and alcohol abuse counseling, and to begin attending AA sessions on a regular basis, either on-line or in person if his work schedule permitted. He has entered into a signed agreement to

continue relapse prevention therapy with the Alcohol Abuse Counselor until it is agreed by both parties that it is no longer necessary. He also has entered an agreement with his employer's medical department to submit himself to frequent random screens for alcohol use.

The Individual's Psychologist believes that the individual's risk of relapse is sufficiently low to mitigate the DOE's concerns. The Individual's Psychologist stated that the individual's conversations with him have convinced him that the individual is no longer in denial about his alcoholism. He stated that the individual's sobriety since September 2000, his supportive relationship with his wife, and his willingness to seek counseling and attend AA are factors supporting his maintenance of sobriety. He concluded that the individual's current risk of relapse was below fifty percent, and that with an alcohol monitoring program in place in his workplace, the individual's risk of relapse would be even lower.

The Alcohol Abuse Counselor stated that she believes that the individual is sincere about maintaining his sobriety. She stated that she and the individual have agreed to work through an entire program of relapse recovery, and that he has a high chance maintaining his sobriety permanently if he follows this relapse prevention plan.

The DOE-consultant Psychiatrist testified that he does not believe that the individual is rehabilitated after four years of sobriety. He points to the individual's earlier periods of temporary sobriety that lasted as long as eight years before the individual relapsed. He stated that on the basis of two academic studies on alcohol relapse, that it would take eight years of sobriety before the individual's risk of relapse fell below fifty percent. He stated that the individual's relationships with his brother-in-law and his wife were positive for maintaining sobriety. He encouraged the individual in his efforts to get additional treatment, but believes that waiting to get counseling until September 1, 2004 when he received the DOE-consultant Psychiatrist's findings in late June of 2004 is an indication that he has not truly internalized his need for treatment. He concluded that under the current circumstances, he was unable to find that the individual was rehabilitated "to a reasonable degree of medical certainty." TR at 169.

In the administrative review process, it is the Hearing Officer who has the responsibility for forming an opinion as to whether an individual with alcohol problems has exhibited rehabilitation or

reformation. See 10 C.F.R. § 710.27. The DOE does not have a set policy on what constitutes rehabilitation and reformation from alcohol dependence, but instead makes a case-by-case determination based on the available evidence. Hearing Officers properly give a great deal of deference to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation and reformation. See, e.g., *Personnel Security Hearing* (Case No. VSO-0027), 25 DOE ¶ 82,764 (1995) (finding of rehabilitation); *Personnel Security Hearing* (Case No. VSO-0015), 25 DOE ¶ 82,760 (1995) (finding of no rehabilitation). In cases filed with this Office, it is very rare for a psychiatrist to find reformation or rehabilitation where an individual has been abstinent for less than one year. This is because, as a DOE psychiatrist testified in another proceeding, a period of one year is generally viewed as necessary to reach a state of sustained remission. *Personnel Security Hearing* (Case No. VSO-0154), 26 DOE ¶ 82,794 at 85,813 (1997). In security cases involving a diagnosis of alcohol dependence, medical experts have required that individuals maintain sobriety for a period of two or even three years in order to demonstrate rehabilitation and reformation, especially where the individual has engaged in no recovery activities. See *Personnel Security Hearing* (Case No. VSO-0126), 29 DOE ¶ _____, (January 14, 2005)(As adequate evidence of reformation, the DOE Psychiatrist recommended two years of abstinence if the individual completes a rehabilitation program, or three years of abstinence if he does not) (slip opinion at 4-5).

In the present proceeding, the DOE-consultant Psychiatrist concludes that in light of the individual's two previous relapses after eight years of sobriety and four years of sobriety, the individual must maintain abstinence from alcohol for eight years in order to demonstrate reformation and mitigate the DOE's Criterion (j) concern. He states that the bases for his conclusion are the average relapse rates for alcoholics documented by two statistical studies on alcoholism. As these statistical studies demonstrate, a history of previous relapses, especially after extended periods of sobriety, raises the probability that an alcoholic individual will have a similar relapse in the future. This heightened risk of relapse is a serious security concern for the DOE, and makes it more difficult for an individual with a history of relapses to establish rehabilitation or reformation from a diagnosis of alcohol dependence.

However, I believe the Individual's Psychologist's testimony that a person's previous history of relapses is only one of several factors that should be considered in determining whether a person

has demonstrated rehabilitation or reformation from alcohol dependence. In the present case, I find that the Individual's Psychologist was very knowledgeable about the individual's rehabilitation efforts and that his testimony concerning the individual's relapse prevention efforts was very convincing. Unlike the DOE-consultant Psychiatrist, who examined the individual on one occasion in February 2004, the Individual's Psychologist conducted several sessions with the individual in September and October of 2004, and has been able to assess the individual's progress in overcoming denial concerning his alcoholism as well as his ability to establish and undertake appropriate recovery activities. I agree with the Individual's Psychologist that the evidence that the individual is no longer in denial concerning his alcoholism, that he is committed to lifelong sobriety, that he is actively pursuing a recovery program based on relapse prevention, and that he has subjected himself to alcohol monitoring are all factors which reduce his risk of having a future relapse.

In light of these factors and the individual's four full years of demonstrated abstinence, I agree with the Individual's Psychologist's assessment that the individual now has a good chance of maintaining his sobriety, and that his risk of relapse is low. Accordingly, I find that the individual has demonstrated rehabilitation and reformation from his diagnosis of alcohol dependence, and thereby mitigated the DOE's Criterion (j) concern.

V. CONCLUSION

For the reasons set forth above, I find that the individual suffers from alcohol dependence subject to Criterion (j). Further, I find that this derogatory information under Criterion (j) has been mitigated by sufficient evidence of rehabilitation or reformation. Accordingly, after considering all the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has demonstrated that granting him access authorization would not endanger the common defense and would be clearly consistent with the national interest. It therefore is my conclusion that the individual should be granted

access authorization. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: January 27, 2005